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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JEFFREY SCOTT ZIEGLER,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

15 No. C10-5263 BHS/KLS

16 ORDER DENYING MOTION FOR
17 EXTENSION OF TIME TO FILE 2254
18 PETITION

19 This case has been referred to United States Magistrate Judge Karen L. Strombom
20 pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner Jeffrey Scott Ziegler, who
21 is confined at the Red Rock Correctional Center in Eloy, Arizona, has filed Motions for
22 Extension of Time to File a § 2254 Petition. Dkts. 5 and 8. Petitioner has paid the filing fee.
23 Petitioner asks that he be given an additional sixty days to file a Petition for Writ of Habeas
24 Corpus. Petitioner's motions are not accompanied by a petition for writ of habeas corpus.

25 The court is unable to construe the motions for extension of time as a petition for writ of
26 habeas corpus because it is not filed on the court-approved form and does not set forth any facts
supporting Petitioner's request for habeas relief. *See* Rule 2(c) of the Rules Governing Section
2254 Cases in the United States District Courts. Petitioner states that his current deadline is
“June 4, 2010 90 days from petition for reviews denial by WA Supreme Court 1yr deadline.”

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1 However, Petitioner's motion does not provide any information about the crime(s) of which
 2 Petitioner was convicted, the date of his conviction, when his judgment of conviction was final
 3 or whether he has exhausted state court remedies on the claims he seeks to pursue in a § 2254
 4 petition. Because the court cannot construe the motion for extension of time as a petition for
 5 writ of habeas corpus, the court must recommend dismissal of this action without prejudice,
 6 which will not prevent the Petitioner in any way from filing a petition for writ of habeas corpus
 7 in this court, unless Petitioner immediately files a petition in this action.
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9 To the extent that Petitioner is seeking to toll the statute of limitations before filing a
 10 petition for habeas corpus, the court cannot grant such relief. No petition is currently pending
 11 before the court and it would therefore be inappropriate for the court to make any ruling tolling
 12 the statute of limitations. In the event that the respondent in any future habeas action instituted
 13 by Petitioner raises the 1-year period of limitation in 28 U.S.C. § 2254(d) as an affirmative
 14 defense, Petitioner will be free to argue that his petition is subject to equitable tolling. *See*
 15 *Corjasso v. Ayers*, 278 F.3d 874, 877 (9th Cir. 2002) (Section 2244(d) is subject to equitable
 16 tolling based on a showing of "exceptional circumstances" beyond the prisoner's control).
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18 According, it is **ORDERED**:

19 (1) Petitioner's Motions for Extension of Time (Dkts. 5 and 8) are **DENIED**.
 20 (2) Petitioner shall file a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254¹
 21 **on or before June 22, 2010. If Petitioner fails to do so, the court will recommend that this**
 22 **matter be dismissed.**

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 25 ¹Petitioner must name the state officer having custody of him as the respondent to the petition. *Rumsfeld v. Padilla*,
 26 124 S. Ct. 2711, 2717 (2004) (quoting 28 U.S.C. § 2242). Because Mr. Ziegler is in custody pursuant to a
 Washington state court judgment, but is currently housed in an out-of-state prison, he should name Eldon Vail,
 Secretary of the Washington Department of Corrections as the respondent in his habeas petition.

(3) The Clerk of Court shall provide Petitioner with the current court-approved forms for filing a "Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody."

DATED 9th day of June, 2010.

Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge

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